

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 14,886

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Appeal of )

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INTRODUCTION

The petitioner appeals a decision by the Department of Social and Rehabilitation Services (SRS) denying her application for a day care registration certificate. The issue is whether or not the petitioner in the past violated regulations involving the health and safety of children in her care and, if so, whether the Commissioner properly exercised his discretion in determining that a previously revoked registration certificate should not be reissued based on those violations.

FINDINGS OF FACT

Prior to April, 1996, the petitioner operated a day care program in her home and was registered with SRS. SRS revoked her certificate in April, 1996, after it found the petitioner to be in violation of several of its regulations. The petitioner did not appeal that revocation, and ceased providing day care. Recently, she decided she would reapply for a certificate. SRS denied her application in February, 1997, based on its conclusion that the petitioner had not demonstrated that she had remedied the violations that had led SRS to revoke her certificate in April, 1996.

The SRS day care home registration program requires participants to follow a set of rules and regulations provided to them at the time they are approved for registration. Participants are expected to follow these rules without prompting or monitoring, and SRS does not regularly inspect day care homes unless it receives complaints.

On February 20, 1996, SRS had received a report that a child in the petitioner's care had burned his hand on a steam vaporizer that was operating in the petitioner's home. When SRS contacted the petitioner that day she stated that the child had burned his hand by touching a hot oven rack.

Several days later the petitioner admitted to SRS that she had not been truthful about the source of the child's injuries.

At that time, the petitioner was operating her day care with conditions on her certificate regarding the number and ages of children in her care imposed by SRS after it had determined that the petitioner had had repeated problems controlling and disciplining older children. When SRS revoked the petitioner's

registration in February, 1996, it cited the petitioner's untruthful reporting of the burn incident, her caring on one occasion for more children than allowed by the conditions on her registration, her inability on past occasions to control herself when children misbehaved, and a problem with one of the reference letters the petitioner had filed with SRS.

At the present fair hearing regarding the denial of her reapplication (held on April 14, 1997) the petitioner took issue with several of the reasons given by SRS in revoking her registration, particularly the problem with her reference and the incident of caring for too many children. The petitioner stated that she had received training in anger management and child discipline and was confident she could provide good care for children. She did not deny that she had lied to SRS when it was investigating the child who had been burned, but testified that she did it out of fear of being cited for child abuse. She also stated that she no longer has the vaporizer in her home.

From the testimony of the SRS licensor it is clear that the decision to revoke the petitioner's certificate was made immediately after the burn incident in February, 1996; and that the other reasons cited by SRS in its revocation letter were cumulative violations that, until the burn incident, had not been considered severe enough to revoke the petitioner's registration. Now, however, SRS considers them additional areas of concern justifying the denial of the petitioner's reapplication.

It is arguable that, except for the burn incident, the reasons cited by SRS in its revocation letter, considered individually, are either de minimis or technical. However, when considered cumulatively along with the petitioner's mendacity during the investigation of the burn incident, it must be concluded that they provide a reasonable factual basis under the regulations for SRS to deny the petitioner's reapplication.

### ORDER

The decision of the Department to deny the petitioner's application for a day care registration is affirmed.

### REASONS

The Commissioner of the Department of Social and Rehabilitation Services has the authority to adopt rules and regulations governing the day care registration program and to inspect the premises of registered day care homes. 33 V.S.A. § 306(b)(1) and (4). Such rules and regulations have been adopted and are found in the "Regulations for Family Day Care Homes", effective January 3, 1991. Furthermore, the Commissioner has the specific authority to revoke registrations if rules are broken that affect the health and safety of children in care. 33 V.S.A. § 3502(d).

There can be no doubt in this matter that in the past the petitioner seriously violated at least one of the Department's regulations involving the health and safety of children. Section VI, No.8 of the regulations provides:

The applicant or registrant shall not interfere with, impede, deter, provide false information or cause another to do any of the aforementioned, or in any manner hinder the Department or its agent(s) in an investigation or inspection.

The petitioner now maintains that she lied to the SRS investigator at that time because she was afraid that if she admitted that the child burned his hand on a vaporizer that was operating in her home she would be charged with child abuse. Despite this explanation (or maybe because of it) SRS clearly lacks confidence that the petitioner will be able to abide by all its regulations in the future.

The Commissioner has the authority to determine whether or not an applicant is qualified to operate a registered day care home. 33 V.S.A. § 306(b), Huntington v. SRS, 139 Vt. 416 (1981), Fair Hearing No. 10,414. The Board may only overturn that decision if the Commissioner has acted arbitrarily, capriciously or has otherwise abused his discretion. Fair Hearing No. 13, 090. Once an individual has had her day care registration revoked for cause, mere contrition and assurances that violations won't happen again are insufficient to conclude that the Commissioner is abusing his discretion if he fails to issue a registration upon the individual's reapplication.

The petitioner in this matter has failed to show that the Commissioner's decision was unfounded. There are sufficient facts in the record to support the Commissioner's belief that the petitioner is unable to assure compliance with the regulations governing registered day care homes. The Board may not, in that case, substitute its judgment for that of the Commissioner. Therefore, the decision must be affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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